

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

)	
Canal Electric Company /)	
Cambridge Electric Light Company/)	D.T.E. 02-34
Commonwealth Electric Company)	
)	

**MOTION OF CANAL ELECTRIC COMPANY, CAMBRIDGE ELECTRIC
LIGHT COMPANY, AND COMMONWEALTH ELECTRIC COMPANY FOR A
PROTECTIVE ORDER**

I. INTRODUCTION

On this date, Canal Electric Company (“Canal”), Cambridge Electric Light Company (“Cambridge”), and Commonwealth Electric Company (“Commonwealth,” together, the “Companies”) filed with the Department of Telecommunications and Energy (the “Department”) a Petition for Approvals Relating to Asset Divestiture (the “Petition”). The Petition seeks approval by the Department, pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94, 94A and 94B, for the following: (1) approval of the sale of Canal’s interest in the nuclear power plant known as Seabrook Station (“Seabrook”), which is an operational 1,161-megawatt (“MW”) nuclear generating unit located in Seabrook, New Hampshire, to FPL Energy Seabrook, LLC (“FPLE Seabrook”) (the “Divestiture”); (2) approval of the Ninth Amendment to Power Contract By and Between Canal Electric Company, Cambridge Electric Light Company and Commonwealth Electric Company, which provides for Cambridge and Commonwealth’s buyout of any and all obligations with respect to purchasing Seabrook power from Canal (the “Buyout Agreement”) (together with the Divestiture, the “Seabrook Transaction”); and (3) findings concerning the divested assets as eligible facilities for exempt wholesale generator (“EWG”) status

under Section 32 of the Public Utility Holding Company Act of 1935 (15 U.S.C. § 79z-5a) (“PUCHA”).

As part of the Petition, the Companies have submitted Exhibit 5 which includes information regarding the Companies’ analysis of the Seabrook Transaction. Exhibit 5 contains proprietary, confidential and highly sensitive competitive information regarding the Companies’ assumptions regarding the future market price of power for which it requests protection from public disclosure. For the reasons set forth below, the Companies seek a protective order from the Department to limit disclosure of the requested proprietary, confidential and highly sensitive competitive information to the Office of the Attorney General (the “Attorney General”) and the Department.¹

II. LEGAL STANDARD

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

In interpreting the statute, the Department has held that:

. . . [T]he burden on the company is to establish the need for protection of the information cited by the company. In determining the existence and extent of such need, the Department must consider the presumption in

¹ The Companies have executed a Non-Disclosure Agreement with the Attorney General (see Attachment A, hereto) whereby the Companies will disclose competitively sensitive information to the Attorney General, subject to the Attorney General limiting review and distribution of the information to his staff and technical consultants, as noted in the Non-Disclosure Agreement.

favor of disclosure and the specific reasons why disclosure of the disputed information benefits the public interest.

The Berkshire Gas Company et al., D.P.U. 93-187/188/189/190, at 16 (1994) as cited in Hearing Officers Ruling On the Motion of Boston Gas Company for Confidentiality, D.P.U. 96-50, at 4 (1996).

In practice, the Department has often exercised its authority to protect sensitive market information. For example, the Department has determined specifically that competitively sensitive information, such as price terms, are subject to protective status:

The Department will continue to accord protective status when the proponent carries its burden of proof by indicating the manner in which the price term is competitively sensitive. Proponents generally will face a more difficult task of overcoming the statutory presumption against the disclosure of other terms, such as the identity of the customer.

Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, Letter Order (August 30, 1996). See also Colonial Gas Company, D.P.U. 96-18, at 4 (1996) (the Department determined that price terms were protected in gas supply contracts and allowed Colonial Gas Company's request to protect pricing information including all "reservation fees or charges, demand charges, commodity charges and other pricing information").

Moreover, the Department has recognized that competitively sensitive terms in a competitive market should be protected and that such protection is desirable as a matter of public policy:

The Department recognizes that the replacement gas purchases . . . are being made in a substantially competitive market with a wide field of potential suppliers. This competitive market should allow LDC's to obtain lower gas prices for the benefit of their ratepayers. Clearly the Department should ensure that its review process does not undermine the LDC's efforts to negotiate low cost flexible supply contracts for their systems. The Department also recognizes that a policy of affording contract confidentiality may add value to contracts and provide benefits to

ultimate consumers of gas, the LDC's ratepayers, and therefore may be desirable for policy reasons.

The Berkshire Gas Company et al., D.P.U 93-187/188/189/190, at 20 (1994).

In particular, the Department has recognized the highly sensitive nature of market information in the context of the sale of a nuclear generation facility. A Hearing Officer of the Department recently approved the separate requests of Cambridge Electric Light Company and Western Massachusetts Electric Company to protect information that related directly to the auction of the Vermont Yankee Nuclear Power Station, or pertained to the bidders or material facts concerning their bids in the context of that auction. See Cambridge Electric Light Company, D.T.E. 01-94 (Amended Motion of Cambridge Electric Light Company for a Protective Order) (approved May 9, 2002); Western Massachusetts Electric Company, D.T.E. 01-99 (Western Massachusetts Electric Company's Amended Motion for Protective Treatment) (approved May 9, 2002).

III. INFORMATION REGARDING THE COMPANIES' ANALYSIS OF THE SEABROOK TRANSACTION IN EXHIBIT 5 IS PROPRIETARY, CONFIDENTIAL AND HIGHLY SENSITIVE AND WARRANTS PROTECTION FROM DISCLOSURE

The Companies request confidential treatment of certain information in Exhibit 5 of the Petition relating to the Companies' analysis of the Seabrook Transaction because the information is proprietary, confidential and highly competitively sensitive. Specifically, Cambridge is seeking protection of information in that exhibit relating to the Companies' assumptions regarding the market value of power from the years 2003 through 2026. This information is competitively sensitive because the Companies may use this information in the future for evaluating potential buyouts or buydowns of power purchase agreements. Because of the strategic use of this information, the Companies

consider the information to be proprietary, confidential and highly competitively sensitive. The disclosure of this sensitive information would undermine the Companies' ability to maximize mitigation efforts, which inures to the benefit of the Companies' customers. The Companies' negotiating position in regard to mitigation efforts, including renegotiating purchase power agreements, would be substantially harmed if the Companies' market price assumptions were revealed.

The Department recently protected similar information submitted in Cambridge Electric Light Company, D.T.E. 01-94 (Exhibit DTE 1-11) which related to Cambridge's analysis of the benefits of a 2001 Amendatory Agreement with the Vermont Yankee Nuclear Power Corporation. See D.T.E. 01-94 (May 9, 2002 Approval by the Department of Amended Motion of Cambridge Electric Light Company for a Protective Order). Accordingly, the Companies request that the Department protect the market price and market value information in Exhibit 5 from public disclosure, consistent with G.L. c. 25, § 5 and Department precedent.

IV. CONCLUSION

Cambridge respectfully requests leave to file information in Exhibit 5 relating to the market price and value of power under seal, for disclosure only to the Attorney General and the Department. This approach will allow the Department and the Attorney General to review the Companies' analysis of the Seabrook transaction while ensuring that proprietary, confidential and highly sensitive market-related information will remain confidential.

WHEREFORE, for the reasons set forth herein, the Companies respectfully request that the Department allow the Companies' Motion for a Protective Order.

Respectfully submitted,

**CAMBRIDGE ELECTRIC LIGHT COMPANY
CANAL ELECTRIC COMPANY
COMMONWEALTH ELECTRIC COMPANY**

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